

THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

\* \* \* \* \*

FAMILY ONE, ET AL	*	NO. 9:22-CV-28-MJT-ZJH
	*	Lufkin, Texas
VS.	*	
	*	11:45 a.m. - 1:40 p.m.
ADAM DALE ISAACKS, ET AL	*	March 2, 2023

\* \* \* \* \*

**MOTION HEARING**

BEFORE THE HONORABLE ZACK J. HAWTHORN  
UNITED STATES MAGISTRATE JUDGE

\* \* \* \* \*

Proceedings recorded by computer stenography  
Produced by computer-aided transcription

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1 **APPEARANCES:**

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4 MR. D. CADE BERNSEN  
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13 For Evadale Little League:

14 MR. KENT M. ADAMS  
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18 For Little League Baseball, Inc. and  
19 Texas District 12 Little League:

20 MR. WILLIAM G. FOX, JR.  
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# P R O C E E D I N G S

11:45 P.M. - MARCH 2, 2023

THE COURT: The Court calls Case No. 9:22-CV-28, styled *Family One* all the way up through it looks like *Family Eight, the Plaintiffs, vs. Adam Isaacks, Miranda Isaacks, Little League Baseball, Inc., Little League Baseball International, Texas District 12, Evadale Little League, and Bear Creek Hunting Club*. We're set this morning on various discovery and Protective Order related motions.

Who's here for the plaintiffs?

MR. DAVID BERNSEN: Your Honor, David Bernsen, Cade Bernsen, Marianne Laine, Tanner Franklin, and Britlyn Sanders for the plaintiffs.

THE COURT: Okay. And let's see, for the defendants?

MR. FOX: Yes, Your Honor. William Fox of Winston & Strawn for Texas District 12 Little League and Little League Baseball, Incorporated.

MR. ADAMS: Your Honor, Kent Adams for Evadale Little League.

THE COURT: Okay, I guess nobody showed up for Bear Creek Hunting Club or the Isaackses, so we'll go forward.

Okay, let's -- I'm going to approach it

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1 this way: The first motions I'm going to talk about  
2 are the Motions to Strike the Confidentiality  
3 Designations. That's Brent Stahlnecker's deposition,  
4 Document No. 95; Samantha Mahaffey's deposition,  
5 Document No. 98; and Various Confidentiality  
6 Designations, Document No. 102.

7 I'm going to set the stage in this way:  
8 I'm just going to read to the parties -- and I'm sure  
9 they've read it, but just to make sure everybody is on  
10 the same page, I'm going to read *Binh Hoa Le vs. Exeter*  
11 *Finance Corporation*, 990 F.3d, 410, Fifth Circuit 2021,  
12 and I'm just going to read some of the language from  
13 that opinion, starting at page looks like 418.

14 "In our view" -- this is the Fifth Circuit  
15 talking, obviously -- "courts should be ungenerous with  
16 their discretion to seal judicial records, which plays  
17 out in two legal standards relevant here. The first  
18 standard, requiring only 'good cause', applies to  
19 Protective Orders, sealing documents produced in  
20 discovery. The second standard, a stricter balancing  
21 test, applies 'once a document is filed on the public  
22 record -- when a document becomes a judicial record.'  
23 Under both standards, the working presumption is that  
24 judicial records should not be sealed. That's why  
25 'judges, not litigants,' must undertake a case-by-case,

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1 document by document, line by line, balancing of the  
2 public's common right of access against the interests  
3 favoring nondisclosure. Sealings must be explained at  
4 a level of detail that will allow for this Court's  
5 review. And a court abuses its discretion if it make's  
6 no mention of the presumption in favor of the public's  
7 access to judicial records and fails to articulate any  
8 reasons that would support sealing.

9           "Perhaps most disquieting, documents  
10 marked confidential" -- in this case -- "provided the  
11 basis for summary judgment -- a dispositive order  
12 adjudicating the litigants' substantive rights, yet  
13 there was no mention of the presumption in favor of the  
14 public's access to judicial records.

15           "At the *discovery* stage, when parties are  
16 exchanging information, a stipulated protective order  
17 under Rule 26 may well be proper. Party-agreed secrecy  
18 has its place -- for example, honoring legitimate  
19 privacy interests and facilitating the efficient  
20 exchange of information. But at the *adjudicative*  
21 stage, when materials enter the court record, the  
22 standard for shielding records from public view is far  
23 more arduous. The conflation error -- equating the  
24 standard for keeping un filed discovery confidential  
25 with the standard for placing filed materials under

1 seal -- is a common one and one that over privileges  
2 secrecy and devalues transparency.

3 "The secrecy of judicial records,  
4 including stipulated secrecy, must be justified and  
5 weighed against the presumption of openness that can be  
6 rebutted only by compelling countervailing interests  
7 favoring non-disclosure.

8 "Legal arguments, and the documents  
9 underlying them, belong in the public domain. When it  
10 comes to protecting the right of access, the judge is  
11 the public interest's principal champion. And when the  
12 parties are mutually interested in secrecy, the judge  
13 is its *only* champion.

14 "With great respect, we urge litigants and  
15 our judicial colleagues to zealously guard the public's  
16 right of access to judicial records -- *their* judicial  
17 records -- so that justice may not be done in a  
18 corner."

19 Okay, so I've read the back-and-forth  
20 from the parties on the deposition excerpts and the  
21 exhibits, and the parties seem to be both correct, but  
22 they are using different standards.

23 So, looking at the stipulated Protective  
24 Order -- now, this is an agreement between the  
25 plaintiffs and the defendants, it defines

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1 confidential -- or excuse me, let me go to page 2,  
2 Confidentiality Designation.

3 "Any producing party must designate any  
4 discovery material as confidential, under the terms of  
5 this order, if such party believes reasonably and in  
6 good faith that it contains commercial, proprietary,  
7 personal, or privileged information."

8 Now, that is about as broad as you could  
9 possibly get in two ways:

10 First, anything is proprietary. Unless  
11 you are just giving somebody a blank sheet of paper,  
12 anything is proprietary. If you give the other side an  
13 email, the email address is proprietary. The fact that  
14 it's on Outlook instead of Lotus is proprietary.  
15 Anything is proprietary.

16 Secondly, it's a subjective standard,  
17 it's not an objective standard. So, even if it's not  
18 proprietary objectively, if that party, the producing  
19 party, reasonably and in good faith believes, if they  
20 believe that it contains that information, it must --  
21 and the language says "must" -- designate it as  
22 confidential.

23 I understand why the parties, both the  
24 plaintiffs and the defendants, agree to a Protective  
25 Order. I sign these in a lot of cases. We've got a

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1 form Protective Order on some of the judges' tabs on  
2 the website. But this standard applies just to the  
3 exchange of information. The parties can pretty much  
4 contract whatever they want to contract to when it  
5 comes to exchanging discovery in that Protective Order.

6 But then that different standard applies  
7 when the documents are filed in the public domain, which  
8 is where we are right now, obviously. When that  
9 happens, the standard is -- and they didn't really set  
10 it out particularly in the Fifth Circuit opinion. They  
11 just said case-by-case, line-by-line, page-by-page.  
12 But the sound bite of it is there has to be some kind  
13 of compelling, countervailing interest to keep  
14 something sealed.

15 So here's my proposition -- and I'll get  
16 feedback from the parties -- is that I've looked at  
17 every single document that the plaintiffs are  
18 challenging the confidentiality designation. And I  
19 don't need to go through every single one line-by-line,  
20 page-by-page -- which I did -- to know that these very  
21 smart lawyers over here on my left can make an argument  
22 that they reasonably believe it's proprietary or  
23 personal or commercial. Commercial. I mean, you know,  
24 what's not commercial.

25 And so the motion that's pending before



1 me by the plaintiffs is a Motion to Strike the  
2 confidentiality designation. That's what's in front of  
3 me. And so the law for that is, the Protective Order  
4 that the parties agreed to and Judge Truncale signed.

5               So, again, if I grant their Motion to  
6 Strike the confidentiality designation, on what basis  
7 would it be? Because, like I said, these lawyers are  
8 going to be able to argue that all this information  
9 falls within the agreed-to definition of  
10 confidentiality.

11              So, with that, my impulse is to just  
12 deny the Motion to Strike and I'll give them an  
13 opportunity -- I'll give them some opportunity. If the  
14 plaintiffs have just some winning argument that there  
15 is no way there is a good faith basis that this is not  
16 proprietary, I'll give them a chance to set that  
17 forward. I'm doubtful of it, but I'll give them an  
18 opportunity.

19              But moving forward, and we'll talk about  
20 this, the plaintiffs' Motion to Unseal First Amended  
21 Complaint, that is under the higher *Binh Hoa Le*  
22 standard; okay? So we'll analyze that as to whether  
23 the defendants can point to me that those various  
24 paragraphs in that First Amended Complaint -- I know  
25 it's been superseded with the Second Amended One that

1 has some redactions -- they are going to have to  
2 convince to me that there is some compelling  
3 countervailing interest to keep those portions of it  
4 sealed.

5 Now, to the extent that the plaintiffs or  
6 someone else argues that just by filing the Motion to  
7 Strike the confidentiality designation with the sealed  
8 attachment, then it is now in the public domain and the  
9 *Binh Hoa Le* standard must apply.

10 I understand that that's an attractive  
11 argument, but the problem with that is, is that if that  
12 were the case, then a Protective Order is not worth the  
13 piece of paper it's written on because that would just  
14 provide an end-around any Protective Order.

15 For example, the parties file a Title VII  
16 lawsuit, or whatever. They enter into and agreed a  
17 Protective Order, standard, whatever way you want to  
18 mention it. Defendant then produces Rule 26  
19 disclosures, employment files, records, business  
20 information, whatever the case is. They are very open  
21 and generous with their discovery to the plaintiffs.

22 So all the plaintiff then needs to do is  
23 file a motion to de-designate that confidential  
24 designation under whatever grounds. And by doing that,  
25 the *Binh Hoe Le* standard then applies and the

1 Protective Order doesn't apply, which totally  
2 circumvents the purpose of the Protective Order. It's  
3 a full and free, efficient exchange of information.

4               So, as it just relates to a Motion to  
5 Strike confidentiality designation and that specific  
6 concrete method, I don't believe that's in the public  
7 domain, so to speak, because we're just talking about  
8 Grist Mill Discovery Exchange, which I'm going to talk  
9 about when it's used in an adjudicative fashion here in  
10 a little bit.

11              But there really is no dispute, per se,  
12 among the parties about whether this document shows  
13 that there is some type of joint enterprise liability  
14 on behalf of Little League and District 12 and Evadale  
15 Little League and things like that. These are just  
16 basically stand-alone motions having to do with the  
17 confidentiality of the documents.

18              That having been said, going forward,  
19 when the parties file a motion, whether it's a response  
20 to a Motion for Summary Judgment, expert, Motion in  
21 Limine, whatever it is -- and I know the Protective  
22 Order says, if I mark this confidential, you have to  
23 file it under seal -- the way our local rules are  
24 written is, if you file a response to a Motion for  
25 Summary Judgment and a few attachments are covered

1 within the Protective Order, you file those under seal,  
2 you are supposed to accompany that with a separate  
3 Motion to Seal. That's what the parties will need to  
4 do going forward.

5           And so if -- probably not a lot of  
6 documents on a response to a 12(b)(6) Motion to  
7 Dismiss, but let's just say that the motion recent  
8 Motion to Dismiss was a Motion for Summary Judgment. I  
9 assume the plaintiffs will have a response to it with a  
10 lot of attachments, probably a lot of attachments that  
11 have been marked confidential. So, according to the  
12 Protective Order, unless it's amended, they will have  
13 to file those under seal, but they will have to just go  
14 accompany that with either a Motion to Seal or a Motion  
15 to Unseal to say, "Hey, we recognize this is covered by  
16 the Protective Order, but we think, under the Fifth  
17 Circuit standard for public records, that, you know,  
18 these need to be unsealed. Then it will be up to  
19 either myself or Judge Truncala to make that ruling.

20           Just to give the parties a head-up where  
21 my head is at, again, I've gone through all these  
22 exhibits, all the depo excerpts, and I find that all of  
23 them don't meet the higher standard in *Binh Hoe Le*,  
24 with the exception of Ms. Mahaffey's deposition, page  
25 160, line 2 to 161, line 22.

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1                   So, I could be persuaded otherwise, but  
2 I'm just letting you know, all these exhibits and depo  
3 excerpts at issue, I find they are all covered by the  
4 Discovery Protective Order, but I find, except say for  
5 one, are not covered by the higher-judicial-record-  
6 should-not-be-unsealed standard.

7                   Okay. So that's what I plan to do. I'll  
8 get some feedback from the plaintiffs, starting with  
9 what I mentioned a few minutes ago, and that is, is  
10 there any argument from the plaintiffs that any of  
11 these documents at issue don't fall in the very broad  
12 definition of confidential information that's on page 2  
13 of the Protective Order?

14                  MS. LAINE: Your Honor, we don't believe all  
15 of them fit that definition. However, I can see how  
16 under the [u/i] confidential in the paragraph 3, that  
17 it could be construed that way. Actually, we've gotten  
18 to a point now where there are in the neighborhood of  
19 33,000 documents, and so we're kind of put into the  
20 position that in normal or routine motion practice,  
21 we're scared of violating the Protective Order. It's  
22 just become unworkable because they've labeled  
23 probably, you know, 90-something percent as  
24 confidential, which by itself, that's evidence of bad  
25 faith. And in order to invoke this Protective Order,

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1 it has to be reasonable and in good faith. And so that  
2 is one basis of our argument, that it does not fall  
3 within the Protective Order.

4 THE COURT: Let me stop you right there.  
5 I'll be honest with everybody here. When I sign a  
6 Protective Order, my eyes glaze over; okay? I try to  
7 read all of it to a "T" and say, yeah, this is a good  
8 idea or a bad idea. I used to do that when I was a  
9 younger judge and I had more energy. Now I don't have  
10 as much energy. So I just kind of say, yeah, it looks  
11 all right and I sign my name to it. I even do that  
12 much.

13 I definitely understand why the Protective  
14 Order was suggested, and I don't know who suggested or  
15 brought it up. It's common sense in this case why you  
16 would have one, obviously, for the privacy interest of  
17 the plaintiffs. But it appears that the plaintiffs  
18 agreed to too much or too broad of a definition of  
19 confidential information. I don't think it's bad faith  
20 because, like I said, these lawyers -- and I've a trial  
21 with one of them -- are very smart, and they are going  
22 to be able to meet that burden to say something is  
23 commercial or is -- I mean, anything is commercial and  
24 proprietary.

25 Now, there is nothing that prevents the

1 plaintiffs -- and this is actually set forth in the  
2 Protective Order -- to file a Motion to amend it with  
3 Judge Truncale or myself, to say, you know what, it's  
4 gotten to a point now where this Protective Order is  
5 too broad, and so we want more narrow definitions going  
6 forward because we're getting 30,000 documents, 29,500  
7 of which they have marked "confidential" and we can't  
8 litigate this case under these handcuffs. We just  
9 can't do it.

10                   And so we need to put some modifiers in  
11 here on the definition of "confidential." And whatever  
12 modifiers you want to put in is up to you. And, of  
13 course, if there is some kind of disagreement between  
14 the parties on the definition, then that could be  
15 entertained by either Judge Truncale or myself or  
16 whomever.

17                   But I think going forward, that's how this  
18 needs to be handled is just try to amend -- if the  
19 plaintiffs think it's too restrictive, and maybe the  
20 defendants do, too, I don't know. But if there is a  
21 feeling that if this is too broad and everything is  
22 too confidential and it's being misused, then just file  
23 a motion to amend it with the Court if it can't be  
24 agreed to. That's my suggestion.

25                   MR. DAVID BERNSEN: Your Honor, for the

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1 record, David Bernsen. And we will do so. The  
2 foundation or the beginning of the Protective Order was  
3 during the Pretrial Conference when we informed the  
4 Court and defense counsel that we were dealing with  
5 very sensitive issues regarding the records of these  
6 eight young children, these boys that had been sexually  
7 abused in this case. The defendants at that time, as I  
8 recall, said, "Well, we may have some documents that  
9 may need to be confidential as well." I said that's  
10 fine and we worked through it.

11 And then when they produced -- when the  
12 defendants produced all these records, they summarily  
13 marked everything "confidential." Thousands, tens of  
14 thousands of those documents or pages are in the public  
15 domain. They are the rules, the rules for 2018, '19,  
16 '20, '21 and '22. And it was just an effort to mark  
17 everything that they produced under the guise that it's  
18 protected, the document, under the Protective Order.

19 I don't think it was good faith. That  
20 wasn't what we were talking about. We were working on  
21 a relationship at that time with -- I don't even know  
22 if present counsel was there at the time. But we were  
23 working with the defendants on that. Having been on  
24 the defense side, I've been there.

25 But what became apparent after each of



1 the various document dumps is that they were putting  
2 that confidentiality stamp on everything. And so we've  
3 been complaining about that and going through it,  
4 trying to work with defense counsel, and it's just not  
5 manageable, to where we have to file a Motion to Seal  
6 the Motion to Unseal the documents, and it gets to the  
7 point where it isn't workable. And quite frankly and  
8 candidly, it's not in good faith. I mean, it is an  
9 effort to obscure the facts and documents that in any  
10 other case would not be confidential.

11 So we will take the Court's recommendation  
12 and we will be filing a Motion to Amend it because I  
13 think it's being misused and it's a tactic, if you  
14 will. The defendants will file documents in the  
15 public's record, for instance, the Motion to Dismiss,  
16 saying that plaintiffs don't have enough facts or  
17 information to state a cause of action. We then take  
18 documents from them or that have been produced that  
19 shows to the contrary what they have said in their  
20 public disclosure, that their statements are not true.  
21 And yet we have to circumvent the disclosure by sealing  
22 it or redacting it. And it's very frustrating and it's  
23 unfair.

24 And so I hear what the Court is saying  
25 concerning the lawyers that we have here on this side

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1 of the table. We'll address that. But it's -- they  
2 are using it as a sword and a shield, this  
3 confidentiality, and I think misusing it to their --  
4 or trying to use it to their advantage and our  
5 disadvantage. And that's what our frustration is in  
6 terms of the documents, or for that matter even the  
7 depositions.

8 THE COURT: Okay, but here's what I'm saying,  
9 Mr. Bernsen, is I'm saying everything that I've looked  
10 at, save for that one exception, it doesn't meet the  
11 standard. When they mark confidential, that's the  
12 standard. I think it's confidential under the  
13 Protective Order. I don't think it's confidential when  
14 it's in the public domain.

15 So I can't decide it right now because  
16 there is not a Motion to Unseal -- and I'm not talking  
17 about the confidential designations. So, when you  
18 respond to that Motion for Summary Judgment, or  
19 whatever it is, and all 25 of your exhibits are filed  
20 under seal, okay, because they all have that stamp on  
21 it and that's what you have to do under a Protective  
22 Order as written, file a Motion to Unseal and say,  
23 "Look, this is the *Binh Hoa Le* case. The public has a  
24 right to know. There is no compelling necessity to  
25 keep this sealed," and they'll have an opportunity to

1 respond. And then Judge Truncale and myself are guided  
2 by the what the Fifth Circuit has said in that case;  
3 okay?

4 So it might be a problem because it's  
5 tedious, but this is what y'all have agreed to and this  
6 is what I have to enforce, unless there is an amended  
7 order.

8 MR. DAVID BERNSEN: All right, Judge.

9 THE COURT: All right. Any response from the  
10 defendants?

11 MR. ADAMS: Your Honor, Kent Adams for Evadale  
12 Little League. May I introduce someone to the Court.  
13 This is his first time here. William Fox is a partner  
14 with Winston & Strawn, he's a graduate of the  
15 University of Virginia, undergrad at Duke University  
16 Law School, and he's worked for a Texas Supreme Court  
17 Judge and a Northern District of Texas Federal Judge.  
18 I just wanted to introduce him to the Court since he  
19 hasn't been here, Your Honor.

20 THE COURT: Okay. All right, Mr. Fox, any  
21 response?

22 MR. FOX: Yes, Judge, thank you for the  
23 guidance.

24 And thank you for the introduction,  
25 Mr. Adams.

1                   We do not believe that we have ever acted  
2 in bad faith in this case. And the example that I will  
3 provide the Court, I believe, crystallizes that -- and  
4 we will get into it, I'm sure, in a moment -- is the  
5 also pending Motion to Unseal the Amended Complaint.

6                   As Mr. Bernsen had said, there is material  
7 in that pleading that came from documents that had  
8 confidentiality designations on them.

9                   THE COURT: Okay, let's just talk about that  
10 now. I'm not accusing anybody of bad faith, but let's  
11 segue into Document 112 now, and that's the Motion to  
12 Unseal.

13                   So tell me, Mr. Fox, the compelling  
14 countervailing interests of keeping paragraphs 109,  
15 first sentence, third sentence; 111, 113, 114, 115  
16 sealed from the public.

17                   MR. FOX: Yes, Judge. May I go back to the  
18 table and pick up my --

19                   THE COURT: Yes, sir.

20                   MR. FOX: So I'll start off by saying that we  
21 recognize that the standard for sealing something,  
22 sealing a public record, is higher than the Protective  
23 Order standard. We have to overcome the presumption of  
24 public access to court records. This was announced by  
25 the Supreme Court in the *Nixon* case that we cite and

1 the *Apple* case from the Federal Circuit and the *Binh*  
2 *Hoe Le* case in the Fifth Circuit and the *Trover* case  
3 from the Eastern District of Texas. The *Nixon* case  
4 and the *Apple* case both recognize that one of the  
5 situations in which the presumption is overcome is when  
6 the document to be sealed contains sensitive business  
7 information.

8 ***[Audio problem developed, after which a recess***  
9 ***is taken and the proceedings resumed as follows:]***

10 THE COURT: Mr. Fox, if you can go back to the  
11 podium.

12 MR. FOX: Thank you, Judge.

13 I believe where I left off is that I was  
14 contending that the two categories of information in  
15 which these six paragraphs fall, they fall into the  
16 sensitive business information category, and within  
17 that there are two different categories that we have  
18 discussed in our briefing. One of them is information  
19 about internal budget deliberations of Little League  
20 Baseball, and the second category is internal  
21 deliberations about policies and procedures, mainly  
22 draft policies and procedures.

23 Mr. Stahlnecker's declaration that we  
24 attached to Docket 144 discusses both of those things  
25 and explains why these categories of information are

1 sensitive.

2                   With regard to paragraph 109, which  
3 contains the internal budgetary information, he says,  
4 "Disclosing Little League's internal deliberations  
5 regarding budget allocations, including about safety  
6 related issues, would harm Little League's competitive  
7 standing by, for example, disadvantaging Little League  
8 in negotiations with current and potential vendors who  
9 would not otherwise know what internal budget  
10 allocations Little League makes and who could use the  
11 disclosed information to secure more favorable  
12 financial arrangements with Little League, that is,  
13 financial arrangements less favorable to Little League.

14               THE COURT: So how does Mr. Stahlnecker think  
15 he's going to be able to try this case? I mean, this  
16 is going to come up at trial. I mean, I've read the  
17 stuff about Samantha Mahaffey back and forth: "I was  
18 only given this and, it was denied, I wanted more, we  
19 spent this, but they only allocated this."

20                   If this case is going to be a trial, it's  
21 going to come up, and a trial was public, last I  
22 checked. So is he going to suggest the Court just  
23 close its courtroom and kick everybody out because they  
24 are talking about Samantha Mahaffey's budget?

25               MR. FOX: Well, that's the position that we

1 are taking now. We don't believe that the entire  
2 trial --

3 THE COURT: How is it going to change? How is  
4 it not going to be non-internal deliberations at trial?  
5 I mean, like the character of this is not going to  
6 change at trial, as it is now. It's still business  
7 information or whatever Mr. Stahlnecker thinks. But, I  
8 mean, we try cases here in Lufkin and my guess is this  
9 is going to come out, probably in opening statements, I  
10 would assume, because I keep hearing so much about it  
11 according to the documents back and forth. And Motions  
12 to Dismiss and all that kind of stuff, not just this.

13 But I think Little League Baseball needs  
14 to keep the end in mind to know that unless this case  
15 settles or it's disposed of otherwise, all this is  
16 coming out at trial.

17 MR. FOX: Well, the answer to that, Your  
18 Honor, honestly, just depends on how you rule under the  
19 *Binh Hoa* standard and on this issue. Because we are  
20 now contending that this meets the standard given the  
21 evidence in the record, Mr. Stahlnecker's declaration.  
22 If this same limited information were to be discussed  
23 at trial, appropriate procedures would have to be taken  
24 to seal the courtroom for those parts.

25 The next category of information is the

1 internal deliberations regarding non-final policies and  
2 procedures. Mr. Stahlnecker states regarding that  
3 category:

4 "Disclosing incomplete accounts of  
5 internal discussions about proposed or non-final  
6 changes to Little League's policies will harm Little  
7 League's competitive standing by diminishing Little  
8 League's ability to recruit Little League participants  
9 and volunteers by creating confusion and misimpressions  
10 about the content of Little League's policies."

11 So I don't have much more to say about  
12 this, Your Honor. I believe the question comes down  
13 simply to whether you believe this evidence that I have  
14 just discussed meets the standard. We contend that it  
15 does. I believe it was in the *Trover* case that similar  
16 declarations were submitted and they did it there.

17 So that's all I have for you on that.

18 THE COURT: Okay. I'm going to grant the  
19 Plaintiffs' Motion to Unseal the First Amended  
20 Complaint. I don't think the paragraphs at issue meet  
21 the standard set forth in *Binh Hoa Le* and *Holy Land*  
22 *Foundation*, and so I'm going to grant the motion now.

23 It's not before me and I kind of glanced  
24 at it, but the Second Amended Complaint -- help me out,  
25 plaintiffs -- there were some redactions. Again, there



1 is not a Motion to Unseal, but it doesn't make much  
2 sense for me to unseal these particular portions of the  
3 First Amended Complaint, but not do the same to the  
4 Second Amended Complaint.

5 MS. LAINE: Okay. So, in the Second Amended  
6 Complaint, I can tell you that paragraphs 118, 120,  
7 122, 123 and 124, these were the same -- they are the  
8 same standard that was in the First Amended Complaint.

9 THE COURT: Okay.

10 MS. LAINE: And so we can file another --

11 THE COURT: Again, there is not an active  
12 motion, but I don't like redacted information on the  
13 docket.

14 MS. LAINE: I agree with that.

15 THE COURT: Unless it's a birthday or Social  
16 Security number or minor plaintiff's name or something  
17 that's quite obvious. But something that just a party  
18 doesn't want to get out in the public domain shouldn't  
19 just be redacted.

20 MS. LAINE: So we will file a Motion to Unseal  
21 and --

22 THE COURT: Right, unredact. File a motion to  
23 file an unredacted.

24 MS. LAINE: Unredacted copy of the First  
25 Amended Complaint?

1 THE COURT: Yes, right, that's correct.

2 Y'all will have an opportunity to be  
3 heard, you know, the defendants. It can be opposed or  
4 unopposed and you can respond and say, no, those  
5 paragraphs are different or Hawthorn was wrong or  
6 whatever, that's fine. I don't care.

7 MR. FOX: Yes, Judge.

8 THE COURT: Okay. All right. Anything from  
9 you, Mr. Adams?

10 MR. ADAMS: No, Your Honor.

11 THE COURT: All right. I might forget about  
12 you, so if you need something, just stand up and let me  
13 know.

14 MR. ADAMS: I just want to blend in the --

15 THE COURT: Okay, if you want to have a seat,  
16 okay.

17 All right. So let's go to the Motions to  
18 Quash. We'll start with the first one. That's Docket  
19 Entry 76. Let me get to it real quick.

20 Mr. Fox, if you want to come to the  
21 podium, I'll address you first on this.

22 All right. So this is a deposition by  
23 written questions geared towards, from what I  
24 understand, the insurance brokers of certain entities  
25 that Little League uses for insurance and defendants

1 want to quash it under the standard boilerplate  
2 objection language. Plaintiffs claim they need it to  
3 refute or to advance their theories of vicarious  
4 liability and joint enterprise, but something is  
5 sticking out to me on this.

6           On some of these policies, Mr. Fox, the  
7 description of the insured says the district  
8 administrators. So, in the Motion to Dismiss the  
9 Second Amended Complaint and throughout this  
10 litigation, you know, Little League Baseball is trying  
11 to position itself to say: We're not vicariously  
12 liable for what happens at the local level because we  
13 have no -- I can't remember the phraseology -- direct  
14 control over the manners, methods, and means.

15           And so the plaintiffs are obviously trying  
16 to refute that and say: No, you do. And in fact, you  
17 are writing insurance for -- and this is where my  
18 question is. It says Business Description. I'm just  
19 going to document 79-2, page 5. It says the named  
20 insured is Corporation, that's Little League Baseball,  
21 Incorporated, and the business description is District  
22 Administrators. So who are we insuring with this  
23 policy right here?

24           MR. FOX: The District Administrators are  
25 additional insureds.

1           THE COURT: Okay. And are we talking about  
2 Ms. Roebuck, District Administrator, or people with  
3 Little League in Williamsport? Like who are the  
4 District Administrators.

5           MR. FOX: So, within the Little League  
6 framework, you have Little League Baseball,  
7 Incorporated. That is a federally chartered  
8 organization. It's in Pennsylvania. They have some  
9 100 -- a couple of hundred employees around there.  
10 They also have some employees located in other places.

11           The hierarchy below that are districts,  
12 and these are regional entities that are separate  
13 entities from Little League Baseball, Incorporated. In  
14 this lawsuit they are District 12 --

15           THE COURT: You said separate?

16           MR. FOX: Yes, sir.

17           THE COURT: Okay, how separate? So they are  
18 insuring people they are separate from? I mean, I  
19 don't insure strangers down the street. I don't insure  
20 my next door neighbor. I insured my kids. But you see  
21 this is why the plaintiffs want this information;  
22 right? You're saying they are separate, but you're  
23 writing policies or paying for policies in which there  
24 are additional insureds.

25           MR. FOX: So this is set up so that these

1 other entities can get insurance.

2 THE COURT: Okay. So the District -- now,  
3 District Administrators, is Jennifer Roebuck somebody  
4 who's an additional insured under this policy? So  
5 District 12 got sued. I don't think she got -- she  
6 didn't get sued individually?

7 MR. FOX: Correct.

8 THE COURT: But let's just say, for argument's  
9 sake, she got sued individually. Would she be insured  
10 under this policy or is that a difference layer of  
11 District Administrator?

12 MR. FOX: My understanding is that these  
13 policies cover the districts themselves.

14 THE COURT: Okay, District 12?

15 MR. FOX: Yes.

16 THE COURT: All right. So, according to this  
17 policy, Little League is insuring District 12. And I'm  
18 not getting into your business, but you are here also  
19 representing District 12; are you not?

20 MR. FOX: Yes.

21 THE COURT: Okay. So I would just assume, not  
22 to get into your business, but an insurance company may  
23 or may not have hired y'all to represent under the same  
24 policy?

25 Well, don't answer that. I don't want to

1 get into your business. Don't answer that. But go  
2 ahead, you were going to say something before that.

3 MR. FOX: I was going to answer the question.

4 THE COURT: Okay. Well, you can answer it.

5 MR. FOX: So the insurance policy that applies  
6 to District 12 in this case is not the same insurance  
7 policy that applies to Little League Baseball in this  
8 case.

9 THE COURT: All right. But they are  
10 additional insureds? And I know -- I'm going through  
11 these documents and like there are separate premiums  
12 for each.

13 Okay, so going back now, just to make sure  
14 I'm clear, the District Administrators are people who  
15 work -- like would she -- would Jennifer Roebuck be an  
16 additional insured under this policy, under District  
17 Administrator?

18 MR. ADAMS: Your Honor, the reason I'm  
19 interested in this is because my client, Evadale Little  
20 League, is part of the same insurance program. And  
21 Little League Baseball has their own insurance, as  
22 Mr. Fox points out. But it also has created a portal  
23 for District 12, for example, and Evadale Little  
24 League, to require insurance, as well as a service to  
25 those entities. And as we understand it, the officers,

1 the board members, the regional, the District  
2 Administrators and so forth are additional insureds  
3 under those policies, if that answers the Court's  
4 question.

5 THE COURT: All right.

6 MR. FOX: So what may not have been clear is  
7 that there are different policies. Like there is a  
8 policy for District 12 on which District 12 is the  
9 additional insured. That does not provide coverage of  
10 Little League Baseball and District 12 at the same  
11 time.

12 THE COURT: Well, it says the named insured  
13 and -- hold on. It says: Named insured and mailing  
14 address, Little League Baseball -- I'm on the wrong  
15 page, okay, sorry.

16 On Document 79-2, page 5, it says: Named  
17 insured and mailing address, Little League Baseball,  
18 Incorporated, South Williamsport, Pennsylvania.  
19 Business description: District Administrators.

20 So that's a different policy? I'm  
21 unclear.

22 MR. CADE BERNSEN: Your Honor --

23 THE COURT: Wait, Mr. Bernsen, Mr. Younger  
24 Bernsen. No.

25 MR. CADE BERNSEN: I'm sorry, Your Honor.

1 MR. ADAMS: Your Honor, now, are you looking  
2 at plaintiffs' request --

3 THE COURT: I'm reading an attachment to the  
4 motion -- Defendant Little League's Motion to Quash  
5 subpoenas. And so this is an attachment to that,  
6 Exhibit D.

7 Hold on, hold on. No, I misspoke,  
8 Mr. Adams, sorry. Document 79 -- I'm sorry. This is  
9 the Plaintiffs' response to the motion -- the Motion  
10 for Protection from the deposition by written  
11 questions. And so plaintiffs are attaching this  
12 document to show, "Hey, you know, they are fighting us  
13 tooth and nail about joint enterprise liability and  
14 vicarious liability, but we've got this document in  
15 which both District Administrators and Little League,  
16 Incorporated are listed on the same policy when they  
17 are telling us in their Motion to Dismiss that, no,  
18 these are separate deals, we don't have any control  
19 over them."

20 I'm just reading from an attachment that  
21 the plaintiffs filed.

22 MR. FOX: Okay. So, Your Honor, to get to, I  
23 believe, what the point of our motion is, is that we  
24 have argued that these are overbroad subpoenas and  
25 request irrelevant information. In their response



1 plaintiffs have articulated a narrow theory of  
2 relevance, but these requests go beyond that theory of  
3 relevance. They say, for example, "Produce  
4 applications and documents submitted in connection with  
5 obtaining insurance for the following policy." That's  
6 not limited in any way.

7           And then it says in that same sentence for  
8 other ones, and I'm looking at 76-3, page 10 of 29,  
9 right now.

10           And then if you go back to 76-1, page 5 of  
11 19, it says, "Produce any and all materials pertaining  
12 to the underwriting decision, risk selection, and  
13 pricing for following policy of insurance." And it  
14 asks that about several policies of insurance.

15           If you go to 76-2, page 5 of 19, again, it  
16 asks, "Please produce any and all materials pertaining  
17 to the underwriting decision, risk selection, and  
18 pricing for the following policies of insurance."

19           So, just to take one thing, the legal  
20 standards that they have to meet to show *respondeat*  
21 *superior* vicarious liability, for example, they have to  
22 prove control over the details of the work of the  
23 servant, the person they are contending is the servant,  
24 for ratification.

25           And another of their theories of

1 liability, they have to prove that Little League  
2 Baseball knowingly accepted the benefit of some  
3 wrongful conduct. For joint enterprise, they have to  
4 show a community of pecuniary interests and among other  
5 things, an equal right to control the enterprise of the  
6 putative enterprise members.

7               So just the mere fact that Little League  
8 may be providing a means for districts or local leagues  
9 to purchase insurance, there may be some aspects that  
10 are relevant to that, but the point of our motion is  
11 that these requests go far beyond that. The theory of  
12 relevance that they propose does not match the scope of  
13 these requests.

14               THE COURT: So what can they request from  
15 Lexington Insurance Company?

16               MR. FOX: Well, they have requested nothing  
17 from Lexington Insurance Company at this point.

18               THE COURT: Okay.

19               MR. FOX: These subpoenas are directed to  
20 Keystone Risk --

21               THE COURT: Yeah, okay. What can they request  
22 from Keystone Risk Managers, LLC?

23               MR. FOX: I don't -- I'm hesitant to come up  
24 with the language of a request for them, but I would  
25 imagine it ought to be tailored to the elements of

1 their theories in some respect.

2 THE COURT: Well, that's kind of why we're  
3 here, you know. Their theory is -- we've already  
4 talked about it -- joint enterprise, ratification,  
5 vicarious liability. And, you know, they want to know,  
6 what is Little League going to their insurance broker  
7 with to say, "Hey, we want a policy for our District  
8 Administrators. We want a policy for us."

9 And so the insurance company, when they  
10 make their underwriting decision, is going to respond  
11 and say, "Okay, so how many District Administrators are  
12 we additionally insuring? Is it five people or 5,000?"  
13 Like they are going to have some questions, you know,  
14 to answer.

15 And so, you know, what the plaintiffs are  
16 trying to get at to refute or to help -- I don't want  
17 to put words in their mouth -- vicarious liability is  
18 to say, "Hey, they spent X number of dollars or they  
19 presented to their insurance broker that they want  
20 insurance for, you know, a thousand District  
21 Administrators."

22 So, of course, you know, District 12 is  
23 under the control, management, and direction of Little  
24 League Baseball because they provided insurance for  
25 them. Or maybe it might be the fact that, no, we're

1 just talking about four people. You know, I don't  
2 know, I don't know what's in there.

3 But, you know, just dealing with insurance  
4 personally with this job is insurance companies want a  
5 lot of information from you before they assume that  
6 obligation to insure the insureds. They want to know  
7 how old your house is, how old the roof is, the wind  
8 storm certificate, the contents, slab, foundation, how  
9 far it is from a fire station. Like it's a pretty  
10 exhaustive questionnaire, and that's just for a house.  
11 These are policies that are multi-million dollar  
12 liability policies.

13 So I guess what I'm coming at you with is  
14 why shouldn't they -- why isn't it relevant to a claim  
15 and defense? Your defense is there is not vicarious  
16 liability. Their claim is there is. And so one way to  
17 show that is the level of control especially when it  
18 comes to providing insurance for local District  
19 Administrators or Little Leagues.

20 What's your response to that?

21 MR. FOX: Well, the mere fact that the  
22 entities have insurance that is through Little League  
23 in some way is not enough on its own to events control.  
24 We cited case law --

25 THE COURT: You're just arguing the merits to

1 me. I'm not granting oral arguments for the Motion to  
2 Dismiss. But, I mean, it does. I mean, if I provide  
3 insurance to someone in this -- if somebody is an  
4 additional insured on my policy in this courtroom,  
5 there has got to be some kind of special relationship  
6 there. It just is. And it may come out that there is  
7 not. I don't know. But being able to provide  
8 insurance or assisting the obtaining of insurance is  
9 relevant to whether there was control or not control;  
10 true or false?

11 MR. FOX: Our position is false because that  
12 the legal standard that they have to meet is that:  
13 Sufficient control over a person, plaintiffs must make  
14 it" -- I'm reading from our motion just to give you the  
15 legal standard, Judge.

16 THE COURT: Right.

17 MR. FOX: They have to show that Little League  
18 controlled the progress, details, and methods of  
19 another's work. That's not mere -- like your outcome  
20 of this job has to be X. For this type of relationship  
21 to obtain, there has to be this extensive level of  
22 control under the law. And, you know, we just don't  
23 think --

24 THE COURT: And insuring someone is not a  
25 level of control? Purchasing insurance for somebody is

1 not a level of control?

2 MR. FOX: Well, no, in the context of Little  
3 League Baseball --

4 THE COURT: Well, let me ask it this way:  
5 Isn't it true that you won't charter a local Little  
6 League if they don't have insurance either through the  
7 risk pool that Little League offers or their own  
8 private insurance? They will say you are not going to  
9 get your charter if you don't have insurance.

10 MR. FOX: I believe so.

11 THE COURT: Okay. So we know that Little  
12 League controls the patch; right? You don't get your  
13 patch unless you have insurance, whether it's  
14 through our pooling agreement or through your own  
15 private agreement.

16 Plus, if the local Little League does get  
17 private insurance, they have to submit those documents  
18 up to headquarters and they have to approve them;  
19 correct? True or not true?

20 MR. FOX: Uh-huh.

21 THE COURT: All right. Okay, I've heard  
22 enough on this.

23 **[Pause]**

24 Let's move on to -- okay, the bank  
25 records, that's Document No. 93. Okay, these are

1 District 12's Capital One Bank records.

2 MR. FOX: And in addition to that, they are  
3 records from an accounting firm called Blackburn, Meek,  
4 Maxey, I think.

5 THE COURT: Okay. Do you want to argue on  
6 this, Mr. Fox?

7 MR. FOX: Yes, Judge.

8 So, again, our argument here is that  
9 these requests are again overbroad and requesting  
10 irrelevant information. They request from Capital One,  
11 for example -- and there are three different ones of  
12 Capital One. I'll just give you examples from one of  
13 them.

14 "Please produce any and all documents  
15 relating to all bank accounts in the name of Texas  
16 District 12 Little League for the period including, but  
17 not limited to January 1, 2012 to the present."

18 The second one asks for all bank  
19 statements during this same period; all cancelled  
20 checks during the same period; all deposits, slips, and  
21 receipts from the same period; all check registers from  
22 the same period. And the list goes on.

23 And in plaintiff's response they again  
24 propose a narrow theory of liability related to this  
25 alleged relationship between local leagues, districts,

1 and Little League Baseball.

2           Again, these broad requests go far beyond  
3 that theory of relevance. They do not request merely  
4 transactions among these entities, or records in which  
5 District 12 interacted with the local league or with  
6 Little League. They request absolutely everything from  
7 this time period.

8           THE COURT: Well, what else would there be?  
9 I mean, I thought District 12 was just set up for  
10 basically the supervisor, for lack of a better term, of  
11 16 Little Leagues. Did they have another carpentry  
12 business that they were doing or something? Like I  
13 thought District 12 was just set up to supervise and  
14 maintain, you know, these local 16 leagues or whatever.  
15 Like what else is District 12 into that's not related  
16 to Little League?

17           MR. FOX: Well, so the main set of  
18 expenditures that District -- well, Texas District 12  
19 Little League has is that they have a district level  
20 tournament every year.

21           THE COURT: Okay.

22           MR. FOX: And that is the thing that they  
23 spend money on. In addition to that, if umpires, if  
24 people like Jennifer Roebuck or Melissa Riedinger need  
25 to travel to go to trainings of variation kinds, they



1 will pay for those things. But the point is that there  
2 are expenses that District 12 incurs that are District  
3 12's expenses.

4 THE COURT: Okay. And what's the problem with  
5 that? I mean, they are a defendant.

6 MR. FOX: I'm sorry, what's the problem with  
7 what?

8 THE COURT: I mean, what's the problem with  
9 getting access to what District 12 is spending their  
10 money on? They are a defendant in this case. And if  
11 they are, you know, spending money on fields for  
12 Evadale Little League, isn't that relevant to show some  
13 type of, you know, control between District 12 and  
14 Evadale Little League?

15 Well, first of all, just to be clear,  
16 these are directed at Capital One, it's not directed at  
17 District -- I know District 12 is the subject, but they  
18 are not asking District 12 to produce these. They are  
19 not asking your clients to produce these records. They  
20 are asking Capital One to do it. According to the  
21 plaintiff, they say Capital One is ready and willing to  
22 provide all these documents. Plaintiffs have to pay  
23 for it, which is probably going to be expensive.

24 But anyway, the whole unduly burdensome  
25 and all those arguments, like, if somebody asks me to

1 provide my last 10 years check registers and expenses,  
2 that would be a real pain for me to do that. If they  
3 want to ask my bank to do it, hey, that's fine, have at  
4 it.

5 But, you know, again, without glossing  
6 over it, the biggest point of contention thus far in  
7 this litigation is Adam Isaacks did these bad things to  
8 these kids; okay? Little League Baseball did not. And  
9 Little League Baseball has no kind of control over Adam  
10 Isaacks, his wife, Evadale Little League, District 12,  
11 okay, none of that. And so what the plaintiffs are  
12 trying to push back on is, no, there is. There is some  
13 type of cooperation. There is a joint enterprise  
14 between the local Little League, the coaches, and  
15 Little League Baseball.

16 So what the plaintiffs want is they want  
17 to know -- you know, they always say follow the money.  
18 So I think Ms. Roebuck said they charged \$2.00 per  
19 player for the local little Leagues to District 12.  
20 So what was that money, you know, spent on? Did it  
21 flow back to District 12 or did that go up to Little  
22 League Baseball?

23 So, like Inn of Court, for instance, for  
24 our dues we have to pay a certain amount to Inn of  
25 Court National, the American Inns of Court, whatever

1 that is, even though we're a local charter. So, if  
2 you've got kids who are playing Little League Baseball,  
3 they are paying -- I don't know if the discovery bears  
4 it out. I assume it's the case. A certain amount of  
5 money that they pay to Evadale Little League or  
6 whatever goes towards Little League Baseball.

7 So I guess my point is, why isn't it  
8 relevant, I mean, where the money is flowing back and  
9 forth?

10 MR. FOX: My argument is the same, Your Honor.  
11 They could have had requests that are tailored to that  
12 theory of relevance. For example, they could have  
13 asked for documents pertaining to transactions between  
14 District 12 and local leagues. They could have asked  
15 for documents related to local leagues just in some  
16 way. But they have not limited their requests in any  
17 way whatsoever.

18 THE COURT: Can they request documents from  
19 District 12 to Little League Baseball, like how much is  
20 District 12 paying Little League Baseball?

21 MR. FOX: Not in these subpoenas.

22 THE COURT: I mean, like District 12, I would  
23 assume, is either getting money from Little League or  
24 paying money to Little League; right? Do you think?

25 I mean, I saw a document here that Tyler

1 County Little League is paying -- I think it said,  
2 "Please remit payment to," and it's little League  
3 Baseball in Williamsport.

4 MR. FOX: Well, the local leagues --

5 THE COURT: Right.

6 MR. FOX: -- yes --

7 THE COURT: Okay.

8 MR. FOX: -- pay dues to Little League  
9 Baseball.

10 THE COURT: Sure. And does that flow through  
11 District 12?

12 MR. FOX: It's not through the district. It's  
13 like that, it's not through the district.

14 THE COURT: Okay. So Tyler County Little  
15 League pays - writes a check, not to District 12, but  
16 it pays a check to Williamsport --

17 MR. FOX: Little League Baseball.

18 THE COURT: -- Little League Baseball?

19 MR. FOX: So that is separate from this two  
20 dollar assessment that District 12 started asking the  
21 local leagues for in recent years. Little League  
22 Baseball does not fund the districts. They are largely  
23 on their own when it comes to gathering funds to put on  
24 this baseball tournament that I mentioned and to cover  
25 their other expenses. District 12 is staffed by local

1 volunteers, just like a local league would be.

2           And to answer your question from a moment  
3 ago, Your Honor, when you asked about whether they have  
4 requested -- and my understanding was had have they  
5 requested this subpoena, documents specifically related  
6 to transfers between Little League and District 12, or  
7 even local leagues and District 12, while I would agree  
8 that these requests encompass those things, they also  
9 go beyond them, requesting other things as well.

10           THE COURT: Any response from the plaintiffs?

11           MR. DAVID BERNSEN: Yes, Your Honor. For the  
12 record, David Bernsen.

13           For the first Motion to Quash, which is  
14 Document 76, which is the underwriting, there is a bit  
15 of confusion, I think, on this side of the table. The  
16 premiums for District 12, whatever the structure is,  
17 are paid by Little League Baseball, Incorporated,  
18 period.

19           The problem that we have -- and the Court  
20 is right on it -- is that one of their big positions  
21 has been they are all autonomous, they are separate,  
22 they are not related in any form or manner.

23           The policy, that document the Court was  
24 reading, has the named insured as Little League  
25 Baseball, Incorporated. In the beginning there was a

1 question whether or not it was Little League Baseball,  
2 Inc., was the proper defendant Little League Baseball  
3 International, Incorporated. And we had to fight  
4 through those issues. I think they have conceded  
5 finally, the defendant has, that it's Little League  
6 Baseball, Incorporated.

7 But the way this policy declaration reads,  
8 it says the named insurance is Little League Baseball  
9 Incorporated. The named insured is corporation and the  
10 business description is District Administrators.

11 Under the structure, there's Williamsport,  
12 then there are regional offices, then there are District  
13 Administrators. We have sued District 12 because of  
14 all the confusion, but it may be that -- and I'm not  
15 sure that the answer was given, but I think it will be  
16 in these documents -- is it the District Administrator,  
17 themselves individually, or is it the District 12 in each  
18 of the various states.

19 But the underwriting will have all of  
20 that. It will have this is our business, this is how  
21 we're doing it, this is how we proposed you to write us  
22 insurance. But it will have that information and it  
23 goes to that issue as to the structure itself of Little  
24 League Baseball.

25 The liability issues, it impacts that as

1 well, but it goes to, which we think is wrong, that  
2 it's one and the same, that they are all tied together.  
3 And so it's certainly relevant and material, and we  
4 should have an opportunity to get that information.  
5 That's with regard to the underwriting.

6           The finances of District 12, it's all  
7 supposed to be about baseball. So we just said just  
8 give us your bank records as to who you are writing  
9 checks to, where the income is from. And the truth of  
10 the matter is, is that the District 12 -- well, anyway,  
11 it ties into the same issues as to the relationship of  
12 District 12 to Little League Baseball, Incorporated,  
13 the relationship of the District 12 to Evadale, and what  
14 they are spending money for and where they are getting  
15 money. And that's something that goes to that one  
16 issue, as to the structure of the defendants, as well  
17 as to the extended issue of the liability.

18           I think the Court spoke of that, but  
19 that's why we think we're entitled to it because it's  
20 all relevant material, certainly because of the issues  
21 raised by the defendants.

22           THE COURT: Okay. All right.

23           MR. DAVID BERNSEN: Thank you.

24           THE COURT: You're welcome.

25           MR. DAVID BERNSEN: I didn't know if you had a

1 question.

2 THE COURT: I'm good for right now. Thank you.

3 All right, Document 133, Little League  
4 Baseball's Motion to Quash Third Party of Praesidium.  
5 I don't know if I'm pronouncing that correctly or not.

6 MR. FOX: I believe it's Praesidium, Your  
7 Honor.

8 THE COURT: Praesidium, okay.

9 Let's just pinpoint, before we get too far  
10 afield, what day did Little League Baseball, if at all,  
11 engage Praesidium to be a consulting expert?

12 MR. FOX: The date is in October of 2022. I  
13 don't remember the exact date. It might have been the  
14 22nd.

15 THE COURT: Okay. So do you have any  
16 objection to producing these requested documents of  
17 Praesidium prior to them being engaged as a consulting  
18 expert?

19 MR. FOX: We still do, Your Honor, and that's  
20 because we believe the standard under Rule 26 includes  
21 the period of time in which we had not yet formally  
22 engaged them, but were speaking with them in  
23 anticipation of the litigation.

24 THE COURT: All right, so you got the  
25 retention letter from the Bernsens on January of 2022.



1 So do you have any objections to producing the  
2 documents prior to January of 2022?

3 MR. FOX: No.

4 THE COURT: All right. So let me hear from  
5 the plaintiffs what y'all want, or not -- I don't  
6 know -- of documents after January of 2022.

7 MR. CADE BERNSSEN: Yes, Your Honor.

8 THE COURT: Okay, you can explain that to me.

9 MR. CADE BERNSSEN: First, I'm sorry for  
10 speaking out earlier.

11 THE COURT: Okay.

12 MR. CADE BERNSSEN: Just too much caffeine, I  
13 apologize.

14 THE COURT: That's all right.

15 MR. CADE BERNSSEN: Okay. Judge, I feel  
16 passionate about this. I know time is of the essence,  
17 but it's like when you hire, because we've hired many,  
18 many experts. And you have, too, when you were  
19 practicing. You're a great attorney. And your dad is,  
20 too. You know, you get into a case, you hire an  
21 expert. The lawyer hires the expert. In this case  
22 it's their client -- anyway, you hire an expert, you  
23 decide whether they are going to be a consulting expert  
24 or a testifying expert.

25 In this case, what we know is that the

1 corporate rep testifies without objection, without  
2 mention -- in fact, they file those errata sheets that  
3 you are familiar with. They didn't try to change it  
4 then. And he testified -- and what I've come to find  
5 out in this case, in this industry, is that it is a  
6 common practice, Praesidium and then the other one will  
7 come in, too, Players Health, I assume. It is common  
8 for youth organizations to hire these two specific  
9 companies to analyze their child protection program.  
10 That's what they do. They come in there and they say  
11 this is where you're weak, this is where you're strong.  
12 How can we make it better? And that's what they do in  
13 the ongoing ordinary course of business, not as experts  
14 in litigation.

15               So my dad is asking the corporate rep,  
16 what do y'all do? Because Little League wholly fails  
17 to do any kind of monitoring of its own program. And  
18 at the end of the deposition my dad is like "Do y'all  
19 to talk to any third parties about this?"

20               And he's like, "Oh, yeah, we did. You  
21 know, starting in 2020 and 2021 we start talking with  
22 Praesidium and Players Health."

23               And Judge, out of the 30,000 -- may I  
24 approach?

25               THE COURT: Yes.

1                   MR. CADE BERNSEN: Out of the 30,000 and some  
2 odd documents that they produced, we find this one  
3 document, which is Bates labeled LLB031928, from  
4 Praesidium to Samantha Mehaffy, who's their security  
5 director that we think they didn't treat too fairly,  
6 sent October 5, 2021, which, of course, is before  
7 Isaacks' arrest. And it totally corroborates  
8 Stahlnecker's testimony that they are, in fact,  
9 communicating with Praesidium in the ordinary course of  
10 business way prior to his arrest and way prior to any  
11 anticipation of litigation.

12                   So we take his depo. He mentions, oh,  
13 yeah, we're working with them. You know, we're  
14 working with -- and then they try to say, well, it was  
15 just discussions or whatever. They are talking to them  
16 way before the arrest.

17                   And so then -- so, yes, so to me the whole  
18 thing -- so, basically, we take his depo, they panic.  
19 And then a month after his depo they say, "Oh, yeah,  
20 he's our consulting expert."

21                   And to us, frankly, it is a sham. It is  
22 an attempt to -- and it's not that lawyers had hired  
23 them. It's literally Little League that supposedly did  
24 it without their trial counsel doing it. And so we  
25 think that they are trying to basically cloak and cover

1 up all their communications with Praesidium that could  
2 be very relevant to the case. And it's not just -- we  
3 certainly want up until January of 2022, but everything  
4 from January through October, they can't get us a  
5 precise date, which is over a month after, sounds like  
6 you said October 22nd. I think that's literally about  
7 a month after the deposition. We want everything up to  
8 the date they supposedly, you know, hired them as a  
9 consulting expert.

10 And then, honestly, Judge, we want  
11 everything to the present day, because it's not fair  
12 and people can take advantage of this. It's like they  
13 have this ongoing business relationship with Praesidium  
14 and there could be some bad things in there that they  
15 don't -- embarrassing things, because there has been a  
16 lot of damning evidence that's come out against Little  
17 League.

18 So, after the deposition and it came out  
19 of his mouth, they are trying to cover it by saying,  
20 "Oh, yeah, yeah, he's a consulting expert."

21 And we think it reeks of bad faith, it  
22 reeks of gamesmanship, and we don't believe it.

23 So one opportunity could be we think  
24 we're certainly entitled to everything up until October  
25 2022. And if they want to play that game and say that,

1 then from October -- from the day they say he's  
2 consulting, Praesidium, from that date to present, then  
3 you could do an in-camera inspection and we would, I  
4 guess, be comfortable with that.

5 But we certainly think -- I mean, we would  
6 like it all the way to the present because we think the  
7 whole thing is a farce. Respectfully, I mean, we do.

8 THE COURT: Respectfully?

9 MR. CADE BERNSEN: Respectfully.

10 THE COURT: With all due respect?

11 MR. CADE BERNSEN: With all due respect.

12 THE COURT: Here's what I'm going to rule.  
13 I'll grant the Motion to Quash to the extent it applies  
14 to anything on or after -- when did you receive -- when  
15 did Little League get the retention letter from  
16 Bernsen? January something?

17 MR. DAVID BERNSEN: Yes. 18th, maybe.

18 THE COURT: January 18th.

19 MR. DAVID BERNSEN: Don't hold me to that.

20 MR. FOX: I think it was January 19.

21 THE COURT: Sir? January 19, okay.

22 MR. FOX: 19th.

23 THE COURT: I'll deny the motion to protection  
24 for anything that applies to prior January 19th of  
25 2022. Anything after that, I'll inspect in-camera to

1 review whether there is a consulting privilege -- or  
2 excuse me, whether Praesidium meets the standards for  
3 consulting expert, whether they were retained as a  
4 consulting expert, things of that nature. And then  
5 I'll just review it in-camera and make that  
6 determination.

7 I will say, Mr. Fox -- and you can talk  
8 to your clients and the other lawyers that are handling  
9 this case -- you better be real sure that you can meet  
10 the standard for consulting expert. Because once I  
11 start going through all those document and it doesn't  
12 meet the standard -- and I'm not saying you have. But  
13 if you say, no, they are a consulting expert, you can't  
14 have it, it's not going to go over well; okay?

15 So make sure you can meet that standard.  
16 If there is any question at all about it, it might  
17 behoove Little League to just go ahead and produce that  
18 information and withdraw that objection. But I'll just  
19 wait to see it.

20 Okay, here's the complicating factor,  
21 though. This is a third-party subpoena, I think, to  
22 Praesidium, so it's directed towards them. So how am I  
23 going to tell Praesidium what to produce and not  
24 produce?

25 MR. CADE BERNSEN: One recommendation -- may I

1 sit here to answer this?

2 THE COURT: Yeah.

3 MR. CADE BERNSEN: One recommendation I would  
4 say is to have them produce the entire subpoena to the  
5 Court and then y'all could give us everything that  
6 starts -- you know, I think that would be the easiest  
7 way to do it, everything before January 2022. Or  
8 however you want to do it.

9 THE COURT: What's your second suggestion?

10 MR. CADE BERNSEN: Give us all the documents.  
11 We'll determine what is the in-camera inspection for  
12 you and give it to you.

13 THE COURT: What's the third?

14 All right, okay, I'm just -- every time I  
15 review something in-camera, discovery-wise, I always  
16 say, this is the last time I'm going to do this. And I  
17 screw myself every single time when I recommit to doing  
18 it again. It's necessary in this case. So I'm sure  
19 I'll regret my decision to do an in-camera inspection  
20 once I start getting into it, if there is a lot of  
21 information. Maybe there is not, I don't know.

22 But I will just enter an order for  
23 Praesidium to give it all to me and I'll inspect it  
24 in-camera and then I'll provide anything prior to  
25 January 23rd of 2022 to the parties' counsel or

1 whatever. And then after that, I'll make a  
2 determination of consulting privilege and then kind of  
3 go from there.

4 I still have an issue with how it's going  
5 to be -- you know, the returns or the execution. Are  
6 you going to resubmit the deposition by written  
7 questions to Praesidium, just to say "Delivered to Judge  
8 Hawthorn" or --

9 MR. DAVID BERNSEN: We can do that, Your Honor.

10 THE COURT: Okay, just try that and we'll see  
11 what happens.

12 Anything on that, Mr. Fox?

13 MR. FOX: How are we supposed to get back?

14 THE COURT: Well, so this is a -- is the  
15 discovery request directed towards Praesidium or Little  
16 League Baseball?

17 MR. FOX: Praesidium.

18 THE COURT: Okay, Praesidium. So you are  
19 moving for protection for this subpoena or deposition  
20 by written question to Praesidium; they are not  
21 requesting documents from you necessarily.

22 So here's what I'm getting at. I don't  
23 know if you really necessarily need to get back to me,  
24 unless Praesidium is going to give you all the  
25 documents and you're going to give all the documents to



1 me. Like I don't -- what's your role in this is what  
2 I'm trying to ask?

3 MR. FOX: The reason that I asked -- and I'll  
4 preface this by saying we have a similar overbreadth  
5 objection, like the other ones that we've talked about  
6 in addition to this claim of privilege. So we are  
7 claiming privilege. We believe that we are entitled to  
8 that protection; we are entitled to keep these documents  
9 from being produced to anybody because of the privilege.

10 THE COURT: But not the documents before you  
11 knew you were going to get sued; correct?

12 MR. FOX: Correct.

13 THE COURT: Okay.

14 MR. FOX: I'm referring to the documents on  
15 the other side of --

16 THE COURT: Right, right. That's going to  
17 come to me.

18 MR. FOX: Okay.

19 THE COURT: And I'm going to make an in-camera  
20 inspection of it to evaluate whether the consulting  
21 privilege is real and when did it occur.

22 MR. FOX: Okay.

23 THE COURT: To the best of my ability. And if  
24 I think there is no consulting privilege or it happened  
25 on a certain date, then I'll make that determination

1 and then I'll disclose the relevant documents to the  
2 other side. Of course, I'll hold off on it for a  
3 little while to give y'all an opportunity to object or  
4 whatever before I give it to the other side.

5 Anyways, what was your question again?

6 MR. FOX: I think that you've answered it.

7 THE COURT: Okay, all right, very good.

8 MR. FOX: Thank you.

9 THE COURT: All right, the last one is Motion  
10 for Protective Order Regarding Plaintiffs' Facially  
11 Overbroad Subpoena to Players Health.

12 You can go ahead, Mr. Fox. I looked at  
13 this. I really think that the parties can agree to --  
14 y'all are pretty close on what you can and can't get,  
15 or what you want.

16 So it appears that -- help me out,  
17 Mr. Fox -- that Little League is saying, yes, you are  
18 entitled to Players Health documents when it comes to  
19 sexual assault or sexual abuse and things of that  
20 nature, but it's overbroad otherwise.

21 So let me get it from you? What's your  
22 objection to this?

23 MR. FOX: I think that you have articulated  
24 the objection.

25 THE COURT: Without giving the store away,

1 what else is Players Health doing for Little League  
2 Baseball that doesn't regard child safety?

3 MR. FOX: So the answer is other things that  
4 involve child safety, but outside the realm of sexual  
5 abuse of children.

6 THE COURT: Like just injuries, like head  
7 injuries or something like that?

8 MR. FOX: Sure. And also things related to  
9 disputes that parents may have with local leagues. I  
10 don't know if you've experienced --

11 THE COURT: Wait, parents have disputes with  
12 Little League?

13 MR. FOX: Local leagues.

14 THE COURT: I'm shocked.

15 MR. FOX: Regarding the sports aspect of the  
16 game, who can play on what team, rule disputes.

17 THE COURT: Okay.

18 MR. FOX: Things of that nature.

19 THE COURT: Can y'all come to some kind of  
20 agreement on this? I mean, Mr. Bernsen, Cade Bernsen?

21 MR. CADE BERNSEN: We can try, yes, Your Honor.

22 THE COURT: So what they are saying is y'all  
23 can -- you can get the documents as it relates to child  
24 safety, but I guess Players Health does a lot of other  
25 consulting or functions for Little League Baseball

1 other than that.

2 MR. FOX: So it --

3 THE COURT: Sorry, go ahead, Mr. Fox.

4 MR. FOX: If I may correct one thing that you  
5 said, Judge. So there are multiple buckets within  
6 child safety. Child safety from Players Health  
7 perspective, from Little League's perspective,  
8 encompasses things other than the prevention of sexual  
9 abuse. It also pertains to just other safety risks of  
10 the sport.

11 And then even in addition to that,  
12 there is this dynamic of parents having disputes with  
13 leagues about the rules of the game and who can be on  
14 what team and things like that. We think that that  
15 stuff is outside the permissible scope of discovery.  
16 We think that the things pertaining to the prevention  
17 of sexual abuse of children is within the permissible  
18 scope of discovery.

19 THE COURT: Mr. Cade Bernsen?

20 MR. CADE BERNSEN: Your Honor, we think it's  
21 absolutely -- first, they said it's overbroad and they  
22 said -- you know, we asked for five years and Judge  
23 Truncale already said 10 years is not overbroad in this  
24 case, so that's out.

25 How they handle other injuries is

1 important. For instance, in one of the handbooks we've  
2 come across they have this whole concussion education  
3 program where at the beginning of each season they make  
4 the parents sign -- this is in Concord Little League,  
5 which is the model ASAP plan that won the national  
6 award for Little League. And there is a document in  
7 there and it talks about: Here are the warning signs  
8 of a concussion. Please read this. Here's where the  
9 parent signs, here's where the kid signs.

10 So how they handle other injuries is  
11 absolutely relevant.

12 THE COURT: And I think they are agreeing to  
13 that, child safety. Child safety. What he's talking  
14 about is how to deal with crazy parents that are, "Why  
15 is my son not playing on this team?"

16 MR. CADE BERNSEN: Okay, yes, Your Honor, I'm  
17 sorry, I thought he was trying to make a distinction  
18 between -- okay, we just wanted all child safety as it  
19 relates to anything child safety.

20 Plus, Your Honor has pointed one thing.  
21 We just took a second round of depositions in  
22 Williamsport and their Vice-president of Marketing  
23 Communications, Liz Brown, said that Players Health  
24 actually came on campus with a full delegation of  
25 people and made a presentation to Little League

1 executives as to this is what we're offering, this is  
2 what we can do for you. And that's what Mahaffey was  
3 saying, "Show me how to get abuse awareness training  
4 into my program." And so we obviously want anything to  
5 do with those presentations.

6 Surprisingly enough, the corporate counsel  
7 for this company lives in Katy, Texas and she called us  
8 and was a really nice lady, and she was like, "We don't  
9 have a problem complying with this. We're just  
10 waiting -- you know, we're waiting for the Court's  
11 instructions on this." Very nice lady. And it's weird  
12 because Players Health is out of Minnesota and their  
13 general counsel lives in Katy, Texas.

14 Anyway, we would certainly want anything  
15 to do with players safety, regardless if it's sexual  
16 abuse. Anything player safety, and then those  
17 presentations that were given in Williamsport. If  
18 that's fine with you, then we can work it out.

19 MR. FOX: So, to be clear about my position,  
20 it was that within child safety, we contend that the  
21 things about the sexual abuse prevention are within the  
22 permissible scope of discovery, and then the other  
23 aspects of child safety are not.

24 THE COURT: No, it's my contention that they  
25 are. So I'll let you -- I'll grant the Motion to Quash

1 as it pertains to things that are not related to child  
2 safety. And child safety includes, but is not limited  
3 to injuries, concussions, emotional injury, sexual  
4 abuse. I do think that it's relevant to show and I've  
5 seen this before.

6                   You know, their argument may be, hey, they  
7 do all these things to prevent concussions, but they  
8 don't one lick of anything to prevent sexual assaults.  
9 I'm not saying that's true or not, but that's what they  
10 are trying to get at. So I think that is relevant.

11                   So I'll grant the protection to the  
12 subpoena only as regards to things that don't relate to  
13 child safety, and child safety is not just sexual abuse.  
14 It's, you know, physical, mental or emotional injuries.

15                   MR. FOX: Understood.

16                   THE COURT: I don't care about the disputes of  
17 the parents.

18                   MR. CADE BERNSEN: And, Your Honor, one thing,  
19 on these last two, does that include the presentations  
20 they did in Williamsport?

21                   THE COURT: If they regarded child safety,  
22 you're going to get it.

23                   MR. CADE BERNSEN: And one other thing, Your  
24 Honor. On these last two things, Marianne, who's  
25 smarter than I am, she said what about a time frame for

1 these last two --

2 THE COURT: I think Judge Truncale read the  
3 transcript from the latest hearing, or one of the  
4 latest hearings she had with Judge Truncale, and he  
5 said 10 years is standard.

6 MR. FOX: We did not take an issue with the  
7 time frame.

8 THE COURT: Okay.

9 MR. CADE BERNSEN: The time frame about which  
10 we get this stuff completed.

11 THE COURT: Right, okay, we'll talk about that  
12 now, I guess.

13 It's going to be a little bit before I do  
14 written orders on these motions, and they are going to  
15 be brief. But I'm just going to tell you right now,  
16 I'm going to deny Motion to Quash subpoenas, Document  
17 No. 76 and Document No. 93. Again, these are  
18 third-party subpoenas. So, I mean, I'm not going to  
19 call Keystone Risk managers and tell them when to  
20 produce it, but that's up to y'all to get it. If you  
21 want it, you go get it. I'm denying the Motion of the  
22 Protective Order.

23 Just to rehash, the Motion to Strike the  
24 Defendants' Confidentiality Designations -- that's  
25 Docket Entries 95, 98, and 102 -- are all denied.

*Edward L. Reed*  
9251 Lynne Circle  
Orange, Texas 77630 \* 409-330-1605



1                   Plaintiff's Motion to Unseal First Amended  
2 Complaint, Document No. 112, is granted.

3                   The Motion to Quash Third-party Subpoena  
4 to Praesidium is granted in part. It's denied to the  
5 extent that it pertains to information prior to January  
6 23rd of 2022. It's granted to the extent that anything  
7 after that date needs to be submitted to the Court for  
8 in-camera review.

9                   Document No. 154 will be granted in part.  
10 It's granted only to the extent that the request  
11 pertain to information that is not related to player  
12 safety. And I'm not going to verbally give the metes  
13 and bounds of what player safety is, but I'm just going  
14 to say it's something like anything having to do with  
15 the players' mental, physical, or emotional health.

16                   Anything else further from plaintiffs?

17                   MR. DAVID BERNSEN: No, Your Honor, thank you.

18                   THE COURT: You're welcome.

19                   Anything else further from the defense?

20 Mr. Fox?

21                   MR. FOX: No, Judge.

22                   THE COURT: Mr. Adams?

23                   MR. ADAMS: No, Your Honor, but it's the  
24 grandparents that are the most troublesome.

25                   THE COURT: They can be. They can be.

1                   So, going forward, too, just to remind  
2 you, because this might get lost in the wilderness,  
3 when you file a motion that contains an exhibit with  
4 something that's been designated as confidential,  
5 according to the Protective Order, you've got to file  
6 it under seal, but you need to accompany that with a  
7 motion to either seal or unseal. You know, I don't  
8 know which way you are on the fence depending on who's  
9 filing it. So the other side has an opportunity to  
10 respond. And then the standard as far as I'm concerned  
11 is the *Binh Hoa Le* standard.

12                   But the plaintiffs know what my feelings  
13 are on the current Protective Order. It's too broad,  
14 it encompasses everything. And if you squawk about  
15 them designating something confidential, that's on you.  
16 You're the ones that agreed to it.

17                   If you think the confidentiality -- or  
18 excuse me, the Protective Order needs to be amended  
19 because it's being used in bad faith or nefarious  
20 purposes, then get with the other side to try to come up  
21 with some qualifying languages to make it more specific,  
22 more limiting. And if you can't come to an agreement,  
23 file a motion with the Court and we'll take it up.

24                   All right, we're adjourned on this.

25                   **[1:40 p.m. - Proceedings adjourned]**

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REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled  
cause.

/s/ Ed Reed  
Edward L. Reed  
Court Reporter

3-9-23  
Date

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